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Agenda item 137
Administration of justice at the United Nations

Letter dated 20 November 2007 from the President of the General Assembly to the Chairman of the Fifth Committee

I have the honour to transmit herewith a letter from the Chairman of the Sixth Committee dated 19 November 2007 with regard to agenda item 137, Administration of justice at the United Nations (see annex).

(*Signed*) Srgjan **Kerim**

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Annex

Letter dated 19 November 2007 from the Chairman of the Sixth Committee to the President of the General Assembly

I have the honour to write to you with regard to agenda item 137, Administration of justice at the United Nations.

As you are aware, at its 3rd plenary meeting, on 21 September 2007, the General Assembly decided to allocate this item to the Fifth Committee and the Sixth Committee in the light of its resolution 61/261 of 4 April 2007.

During the present session, the Sixth Committee considered the item in plenary at its 2nd, 17th and 28th meetings, on 8 and 26 October and on 19 November 2007, as well as in the context of a Working Group. The Sixth Committee considered the legal aspects of the report of the Secretary-General on the administration of justice at the United Nations (A/62/294), consistent with paragraph 35 of resolution 61/261. It should be noted that the report of the Advisory Committee on Administrative and Budgetary Questions (A/62/7/Add.7) was issued after the Working Group of the Sixth Committee had completed its deliberations.

During the meetings, the Sixth Committee reached a number of conclusions (see appendix I).

I should emphasize that those conclusions, which reflect the contents of the discussions at the Sixth Committee, do not address all the legal aspects of the item. As a consequence, the absence of comments on any legal issue should not be interpreted as meaning that the Sixth Committee has necessarily reached an agreement on that issue. The Sixth Committee has decided that it should continue to discuss the item in the light of further information provided to it, as well as any further decisions that the General Assembly may take on this item at its current session.

It would be appreciated if the present letter, together with its enclosures, including the conclusions (appendix I) and the content of the recommendation of the Sixth Committee to the General Assembly (appendix II), could be brought to the attention of the Chairman of the Fifth Committee and the Secretary-General.

(*Signed*) Alexei **Tulbure**
Chairman of the Sixth Committee of
the General Assembly at its sixty-second session

Appendix I

Administration of justice at the United Nations: conclusions of the Sixth Committee

General issues

Points of agreement

1. All procedures in the system of administration of justice should be consistent with relevant rules of international law and recognized principles of rule of law and due process. Adequate safeguards should be considered to facilitate equality of access of staff members, regardless of their duty stations, to the system of justice and to exercise their right to be heard in the administration of justice system.

Proposed scope of the new system

Points of agreement

2. The new system of administration of justice shall be accessible to all staff covered by the current system.

Issues requiring further consideration

3. Further consideration should be given to the recommendations by the Secretary-General and Member States that the new system of administration of justice be extended to certain categories of "non-staff personnel".

Requests for further information

4. Further information is requested on the following points:

(a) The different categories of non-staff personnel performing personal services for the Organization, including experts on mission and United Nations officials other than staff members of the Secretariat;

(b) The types of dispute settlement mechanisms available to the different categories of non-staff personnel and their effectiveness;

(c) The types of grievances the different categories of non-staff personnel have raised in the past and what bodies of law are relevant to such claims;

(d) Any other mechanism that could be envisaged to provide effective and efficient dispute settlement to the different categories of non-staff personnel, taking into account the nature of their contractual relationship with the Organization.

Legal assistance for staff

Points of agreement

5. Legal assistance for staff should continue to be provided and the strengthening of a professional office of staff legal assistance should be supported, as agreed by the General Assembly in its resolution 61/261. Any legal assistance provided by the Organization should be accessible to staff members regardless of their duty stations. A code of conduct should regulate the activity of the individuals providing legal assistance for staff to ensure their independence and impartiality.

Issues requiring further consideration

6. Further consideration should continue to be given to the question of how best to enhance a professional office of staff legal assistance, including how best to improve the legal assistance currently provided to staff.

Requests for further information

7. Further information is requested on the specific barriers which make it difficult for staff within the United Nations system to be able to access the services of private lawyers, as well as those which limit the ability of private lawyers to be able to serve the needs of staff within the United Nations system, and on what means are potentially available to improve or expand their ability to do so. Further information is also requested on how the issue of legal advice and representation for employees is addressed by other international organizations.

Informal system of justice

Qualifications, selection and terms of reference of the Ombudsman

Points of agreement

8. The nomination and process for the selection of the United Nations Ombudsman, independent from the parties to potential disputes, shall be transparent and ensure the trust of all those involved in the system of administration of justice.

Mediation

Points of agreement

9. Staff and management should be encouraged to resort to mediation as a means for resolving disputes.

10. All staff members, regardless of their duty stations, should have access to mediation. Statements made during the mediation process shall remain confidential by all concerned and shall be inadmissible in subsequent litigation. Agreements concluded by way of mediation shall be binding on the parties and shall be enforceable in the formal system of justice.

Issues requiring further consideration

11. Further consideration should be given to the conditions under which the United Nations Dispute Tribunal may refer cases pending before it to mediation, including the requirement of the consent of the parties and the issue of time frames.

Formal system of justice

Judges

Points of agreement

12. Judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall be of high moral character, have respectively 10 and 15 years of judicial experience in the field of administrative law or its equivalent within their

national jurisdiction, and serve strictly in their personal capacity and enjoy full independence. Due consideration should be given to gender and regional balance in the nomination and process for the selection of judges.

13. Judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall be elected/appointed by the General Assembly. The election/appointment of judges should be staggered so as to ensure a partial periodical renewal of the composition of each Tribunal.

14. Judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall be elected/appointed for one non-renewable term on any one of the two tribunals.

15. Judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall be removable only by the General Assembly and exclusively on grounds of misconduct or incapacity.

Issues requiring further consideration

16. A mechanism shall be identified for the compilation of lists of persons eligible for appointment to the judicial positions at the United Nations Dispute Tribunal and the United Nations Appeals Tribunal to ensure that the required qualifications for these positions are fulfilled. Further consideration should be given to the process for the nomination and selection of judges to be elected/appointed, including the possible establishment, composition and functions of the proposed Internal Justice Council. Further consideration should also be given to the process of election/appointment of the judges.

17. Further consideration should be given to whether the term served by judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal should be six or seven years.

18. Further consideration should be given to mechanisms relating to the initial election/appointment of judges, including how best to implement the decision that the election/appointment of judges should be staggered so as to ensure a partial periodical renewal of the composition of each Tribunal.

19. Further consideration should be given to mechanisms of formal removal of judges, definition of the "grounds of misconduct or incapacity" and the means for the establishment of such grounds in a specific case.

20. Further consideration should be given to the question of whether a decision on first instance should be decided by a single judge or a panel of three judges.

Jurisdiction and powers of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

Points of agreement

21. Compensation ordered by the Tribunals shall normally be subject to the limit of two years' salary.

Issues requiring further consideration

22. Further consideration should be given to the question of the jurisdiction *ratione materiae* of the United Nations Dispute Tribunal.

23. Further consideration should be given to the question of appeals by staff associations before the formal system of justice.

24. Further consideration should be given to the question of the grounds of appeals before the United Nations Appeals Tribunal.

25. Further consideration should be given to defining specific extraordinary circumstances under which it might be appropriate for the Tribunals to award compensation in excess of two years' salary.

26. Further consideration should be given to the question whether, and under what circumstances, specific performance might be ordered by the Tribunals as an alternative to compensation.

Requests for further information

27. Further information or clarification is requested on the following points:

(a) The types of claims former staff members have been eligible to bring and have brought before the United Nations Administrative Tribunal;

(b) Whether the Secretariat and the United Nations Administrative Tribunal interpret the phrase "terms of appointment" in article 2, paragraph 1, of the its statute to extend beyond the written terms of the relevant employment contract, staff regulations, and staff rules and, if so, on what legal basis;

(c) The conditions of employment or the duties of the Organization to its staff;

(d) The proposal to empower the United Nations Dispute Tribunal and the United Nations Appeals Tribunal to refer appropriate cases to the Secretary-General and the heads of funds and programs for "possible action to enforce accountability" and, in particular, how the role of the Secretary-General in this regard will be different from that of the formal system of justice and what mechanisms will prevent duplication of efforts;

(e) The Secretary-General's proposal to empower the United Nations Dispute Tribunal, upon request by the staff member concerned, to suspend action on implementation of a contested administrative decision and specifically, on the criteria the Tribunal would apply in suspending such action;

(f) Composition and role of staff associations.

Registries of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

Points of agreement

28. The structure of the registry or registries of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall ensure the Tribunals' impartiality and avoid any potential conflict of interest, both real and perceived.

Issues requiring further consideration

29. Further consideration should be given to the question whether the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall have one single registry, provided that it shall only manage and administer cases, or separate

registries, in the case that they provide legal assistance to judges on the cases before the Tribunals.

Adoption of the rules of procedure by judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

Points of agreement

30. The United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall establish their own rules, in conformity with the provisions of their Statutes. The rules of procedure established by the Tribunals shall be subject to approval by the General Assembly.

Appendix II

Draft decision

Administration of justice at the United Nations

The General Assembly takes note of the conclusions of the Sixth Committee on the administration of justice at the United Nations[1] following its consideration of the legal aspects of the report of the Secretary-General,[2] requests the Secretary-General to respond to the requests for information contained in that document, taking into account any further decisions that the General Assembly may take during its sixty-second session prior to the meeting of the Ad Hoc Committee referred to below, and decides to establish an Ad Hoc Committee on the Administration of Justice at the United Nations, to be open to all States Members of the United Nations, members of the specialized agencies or members of the International Atomic Energy Agency, for the purpose of continuing the work on the legal aspects of the item, taking into account the results of the deliberations of the Sixth Committee on the item,[3] previous decisions of the Assembly and any further decisions that the Assembly may take during its sixty-second session prior to the meeting of the Ad Hoc Committee. The Ad Hoc Committee shall meet from 10 to 18 April and on 21 and 24 April 2008, and shall report on its work to the Assembly at its sixty-third session. The General Assembly also decides to include in the provisional agenda of its sixty-third session the item entitled "Administration of justice at the United Nations".

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[1] A/C.5/62/11, annex, appendix I.

[2] A/62/294.

[3] A/C.5/61/21, annex, appendix I, and A/C.5/62/11, annex, appendix I.